

has long and thin

In the Matter of)
Envirocare of Utah, Inc.) PETITION FOR EXEMPTION
)

Pursuant to UAC R313-12-55(1), Envirocare of Utah, Inc. ("Envirocare") hereby petitions the Utah Radiation Control Board (the "Board") for an exemption from the land ownership requirements of UAC R313-25-28(1) in connection with the disposal of class B and C low-level radioactive waste.

BACKGROUND

Envirocare operates a low-level radioactive waste ("LLRW") disposal facility at Clive, Utah (the "Site") and is currently licensed by the Utah Division of Radiation Control ("DRC") to receive naturally occurring radioactive material ("NORM"), naturally occurring and accelerator produced radioactive material ("NARM") and class A LLRW. Envirocare has also been licensed by the U.S. Nuclear Regulatory Commission to receive uranium and/or thorium mill tailings, known as "11(e)(2) material." Envirocare also has a permit from the Utah Division of Solid and Hazardous Waste to receive hazardous waste at the Site, which is mixed with LLRW and is designated as "mixed waste." In addition, the U.S. Department of Energy ("DOE") owns and is responsible for a portion of the site on which are deposited the Vitro uranium tailings. Upon closure of the Site, DOE will also own and be responsible for postclosure maintenance of the 11(e)(2) waste cells.

Envirocare has applied for a license to allow it to receive, store, and dispose of class B and C LLRW at the Site. The Site is on land owned by Envirocare.

The Utah Radiation Control Rules (the "Rules") provide that:

Disposal of waste received from other persons may be permitted only on land owned in fee by the Federal or a State government.
UAC R313-25-28(1).

The Rules also provide that:

The Board may, upon application or upon its own initiative, grant exemptions from the requirements of these rules as it determines are authorized by law and will not result in undue hazard to public health and safety or the environment.
UAC R313-12-55(1).

Envirocare obtained an exemption from the land ownership requirement in connection with the disposal of NORM and NARM at the Site. Letter from the Utah Bureau of Radiation Control to

Khosrow Semnani, president of Envirocare, dated November 18, 1987 (Exhibit "A"). The exemption was later extended to cover the disposal of LLRW when Envirocare obtained a license for the disposal of class A LLRW at the Site. Letter from the Utah Bureau of Radiation Control to Mr. Semnani dated March 8, 1991 (Exhibit "B").

The Office of State Programs ("OSP") of the United States Nuclear Regulatory Commission ("NRC") denied a petition to initiate proceedings to suspend or revoke Utah's Agreement State status for failure to require government ownership of the land underlying the site. In the Matter of State of Utah, 41 N.R.C. 43, 1995 NRC LEXIS 4 (Jan. 26, 1995) (Exhibit "C"). In its decision, OSP explained in detail the basis for concluding that the exemption provided protection equivalent to government ownership of the Site. OSP's reasoning is discussed in detail below.

In 1999, Envirocare informally requested from DRC its concurrence that the existing exemption would extend to the receipt, storage treatment and/or disposal of Class B and C LLRW at the Site. In response, DRC indicated that the existing exemption was based on the license to dispose of class A LLRW, and that it would be necessary to apply to the Board for an exemption to the land ownership rule for the disposal of class B and C LLRW.

Envirocare has initiated discussions with DOE to explore the transfer of ownership of the Site to DOE. Envirocare has requested that DOE take ownership of the Site. See letter from Mr. Holtkamp to Carolyn Huntoon, Assistant Secretary the Department of Energy, dated July 12, 2000 (Exhibit "D"). DOE responded by letter dated October 31, 2000 in which it indicated that it could exercise its authority to accept title to the Site following termination of Envirocare's license." Specifically, DOE would first need a determination by the NRC that all the site closure requirements had been met, that the transfer would be without cost to the Federal government, and that Federal ownership "is necessary or desirable in order to protect public health and the environment." DOE stressed that its authority to accept title to the Site "is discretionary, not mandatory." DOE indicated that it would undertake to assess the issues surrounding transfer of low-level radioactive waste sites and invited Envirocare to participate in that effort. A copy of the letter from Ms. Huntoon to Mr. Holtkamp is attached as Exhibit "E."

Envirocare has received indications from DRC that the State would not be interested in taking ownership before cessation of operations, and that, in any event, it will require legislative action to authorize ownership by the State.

Therefore, since any transfer of the Site to the federal or state government will occur after the cessation of disposal

operations, if at all, Envirocare hereby requests an exemption from the land ownership requirements of UAC R313-25-28(1).

BASIS FOR EXEMPTION

The exemption provision of the Rules sets forth two criteria for obtaining an exemption. First, the exemption must be authorized by law. Second, it cannot result in undue hazard to public health and safety or the environment. Both the Utah Department of Environmental Quality ("DEQ") and NRC determined that the existing exemption satisfies both criteria. An exemption in connection with the disposal of class B and C waste will also satisfy the criteria.

The existing exemption was based on a finding by DEQ, concurred in by the NRC's OSP in State of Utah, that institutional controls and other measures would be equivalent to those that would be effected by government ownership of the site.

Specifically, DEQ identified the following elements on which it based its determination that the exemption will protect public health and safety and the environment:

1. The Site is in an area zoned by Tooele County as heavy manufacturing-hazardous, which restricts any residential or commercial development in the vicinity of the site other than waste facilities.

2. Envirocare recorded an Affidavit in the records of the Tooele County Recorder in connection with its hazardous waste disposal permit which refers to the land use restrictions of 40 CFR 264.117(c) which control closure activities at the site.

3. Envirocare is required to provide "as built" drawings to the DRC on a periodic basis (currently annually), which will provide a detailed record of waste types and locations after closure.

4. Envirocare is required by UAC R313-25-33(4) to transfer records to local and state government agencies upon termination of the license.

5. The Site meets the siting criteria of UAC R313-25-3.

6. Envirocare will be required to apply for an amendment to the license to authorize closure of the Site. UAC R313-25-14. Since Envirocare will continue to be the Site owner after closure, there will be no termination or transfer of the license upon closure, with the result that Envirocare will remain responsible through the license for closure, post-closure and institutional controls.

7. Envirocare has in place a trust fund with sufficient funds to ensure protection of the Site. A detailed description

of the trust funds and the amounts in the trust fund is set forth on Exhibit "F."

8. DEQ and Envirocare entered into an Agreement Establishing Covenants and Restrictions regarding the Site (Exhibit "G").

9. The Site is within 300 feet of the DOE Vitro Tailings Disposal site owned by DOE on the north and within 300 feet of the 11(e)(2) disposal facility to be owned by DOE on the west. Federal ownership and control over these sites will provide additional land use control.

Letter From Dr. Dianne R. Nielson, Executive Director of DEQ, to Carlton Kammerer, Director, Office of State Programs, NRC, dated February 12, 1993 (Exhibit "H"). See also State of Utah at 11-14.

The NRC staff analyzed the foregoing measures as they would apply to the three major phases of the life of an LLRW disposal site to determine if they would provide adequate control in lieu of government ownership of the Site. As described in State of Utah, the NRC staff analysis came to the following conclusions:

Operations, Closure, and Post-Closure Observation and Maintenance Period

Envirocare has title to the land and, therefore, is responsible for all activities on the site. The Licensee has provided a Trust Agreement with the State of Utah that provides funds for closure and the post-closure period and the active institutional control period in the event the Licensee is financially incapable of closing the site or abandons the site. The license limits the accumulation of undisposed waste to a specific amount that can be disposed of through the use of the trust funds.

One Hundred-Year Active Institutional Control Period

The State proposed that it is exercising control and can continue to exercise control of the site in such a manner that land ownership is not necessary to protect the public health and safety from the material that is being disposed of at the site. In particular, the State points to its control of the trust fund that includes the money for the active institutional control period. If the site owner is not capable of conducting the activities required during the active control period, the State will carry out the activities by using the money in the trust fund. Under the control mechanisms, the State would not need to own the site to carry out these activities.

Passive Institutional Control Period

The State proposed the use of deed annotation as a method of informing individuals who may wish to use the site in the future that the land was used for waste disposal and should not be disturbed.

The Staff found that the mechanism submitted by the State lacked specificity needed to implement the requisite degree of control because the land annotation did not provide sufficient restrictions on the future use of the site. As a result of this deficiency, the Staff suggested a proposed "restrictive covenant" that the State of Utah could use to implement the requisite degree of control.

State of Utah, at 14-16.

Envirocare and DEQ executed the restrictive covenant proposed by the NRC staff. The restrictive covenant imposes on Envirocare and future owners of the Site the following conditions:

1. No excavation or construction after the LLRW is disposed of and the facility is closed, except as necessary to maintain the premises.
2. No uses of the property that may impair its integrity.
3. No change in use of the Site following closure except with the prior written consent of the Utah Department of Environmental Quality ("DEQ").
4. The erection and continuous maintenance by Envirocare and its successors of monuments and markers, approved by DEQ, to warn of the presence of radioactive material at the Site.
5. No conveyance of the Site by Envirocare without prior written approval of DEQ, and no conveyance of any interest in the Site by Envirocare without adequate and complete provisions for continued maintenance of the Site.
6. The ability of any state or federal agency to enforce the restrictive covenants in an action in state court in Tooele County.

Agreement Establishing of [sic] Restrictive Covenants, by and between Envirocare of Utah Inc. and the Utah Department of Environmental Quality, dated June 29, 1993, recorded in the Tooele County Recorder's Office June 30, 1993 in Book 353 at page 452 (Exhibit "I"). See also State of Utah, at 16-18.

With the addition of the restrictive covenant, the Commission concluded that "the institutional controls, such as the proposed restrictive covenant, could be used in this case to achieve the same safety result as site ownership by state or federal authorities." Letter from Mr. Kammerer to Dr. Nielson, dated June 28, 1993 (Exhibit "J").

With regard to the efficacy of the institutional controls supporting the exemption, including the restrictive covenant, the State of Utah decision made the following finding:

The purpose of the federal or state government land ownership requirement is to provide a higher degree of assurance that through state or federal government ownership of the site, institutional control of the site will continue to exist for longer periods of time than under private ownership. Regarding the similarity between land ownership and a restrictive covenant, in each case there is an entity in existence to take action with regard to its ownership of the land, and with a restrictive covenant, the State can take action to enforce the restrictive covenant.
State of Utah, at 18.

All of the elements supporting the existing exemption as described above justify an exemption in connection with the disposal of class B and C LLRW, with some modification to the scope of certain of the elements to reflect the unique characteristics of class B and C LLRW.

The principal differences between disposal of class A LLRW and class B and C LLRW are in the degree of isolation of the waste necessary (i.e., packaging and depth of burial) and in the length of time for which the waste must be isolated from the ambient environment. In evaluating the institutional controls which would be necessary to accommodate class B and C LLRW for purposes of an exemption from the land ownership requirement, the principal focus would be on the amount of the trust agreement. Certainly, during the operating life of the facility, any adjustment in the amount of funds in the trust agreement would be based on whether additional costs would be incurred to properly dispose of class B and C wastes that had been received at the Site but not yet disposed of. To the extent that the trust agreement account would need to be enlarged to accommodate a longer post-closure period for the class B and C LLRW, that would be done at or near the time of closure.

Legislation will be proposed during the 2001 general session of the Utah Legislature by the Department of Environmental Quality that will further enhance the provisions for control of the site in lieu of state or federal ownership of the property. The legislation will establish a radioactive waste surveillance and maintenance fund to ensure that funds will be available beyond the institutional control period (the first 100 years

following closure of the Site) currently funded by a Letter of Credit from Wells Fargo Bank secured by Envirocare. The legislation will also establish an interest-bearing restricted account to receive fees that will be assessed on the disposal of Class B and C LLRW. These funds will be available after the 100-year institutional control period for such activities as environmental monitoring of the Site, fence and sign replacement and repair, and embankment repairs. The legislation will provide that the funds can be withdrawn from the account during the institutional control period under certain circumstances and subject to their approval. The legislation will allow for legal action to secure recovery or reimbursement of funds if used during the institutional control period.

The legislation will allow the transfer of ownership of the Site to the federal or state government at the end of the institutional control period. The funds in the radioactive waste and surveillance fund will be transferred to the government owner of the property at the end of 100 years. The proposed legislation will need to be approved by the legislature and the governor to become effective; however, in initial discussions with legislative committees in the interim between the 2000 and 2001 general sessions, legislators have generally favored the concept of a perpetual care and maintenance fund.

With the enhancement of the trust agreement fund and the legislative action described above, an exception from the land ownership requirements for class B and C waste "will not result in undue hazard to public health and safety or the environment." UAC R313-12-55(1)). In addition, as confirmed in State of Utah, such an exemption is "authorized by law." Id. Therefore, Envirocare should be granted an exemption from the requirement that the Federal or State government own the Site.

Dated this ____ day of November, 2000.

ENVIROCARE OF UTAH, INC.

APPENDIX A



Norman H. Bangerter

Suzanne Dandoy, M.D., M.P.H.

*Footnote
#19*

November 18, 1987

Mr. Khosrow Semnani
c/o Edd Johnson
3487 West 2100 South
Salt Lake City, Utah 84119

RE: Radioactive Material License Number UT 2300249


Dear Mr. Semnani:

As you are aware, after we received your request for an exemption to the Utah Radiation Control Regulations (URC-24-135) we requested comments from the members of our Radiation Technical Advisory Committee. The consensus of the Committee was to grant the exemption. Each respondent mentioned the importance of providing an indisputable surety arrangement.

As mentioned in the letter to our Advisory Committee on October 16, 1987, the staff of the Bureau of Radiation Control agrees that an exemption could be granted conditional on your providing adequate surety arrangements, and still maintain public health safeguards.

Therefore, pursuant to URC-12-125 an exemption to URC-24-135 is granted, allowing for disposal of low level naturally occurring radioactive waste on privately owned land.

Sincerely,


Larry F. Anderson, Director
Bureau of Radiation Control

APPENDIX B



DEPARTMENT OF HEALTH
DIVISION OF ENVIRONMENTAL HEALTH

Norman H. Bangerter
Governor
Suzanne Dandoy, M.D., M.P.H.
Assistant Secretary
Kenneth L. Alkema
Director
255 North 1460 West
P.O. Box 15490
Salt Lake City, Utah 84115-0490
(801) 538-6121

March 8, 1991

Khosrow Semnani
Envirocare of Utah, Inc.
215 South State Street, Suite 1160
Salt Lake City, Utah 84111


RE: Radioactive Material License No. UT 2300249

Dear Mr. Semnani:

By letter dated November 18, 1987, you were notified that pursuant to your request for an exemption to rule URC-24-135, the exemption had been granted. This provided for private ownership for the Envirocare site and it continues to be in effect.

As you are aware, the Bureau has been reviewing Envirocare's amendment application for disposal of certain "byproduct, source or special nuclear materials", contaminated wastes. Utah Radiation Control Rule R447-25-9(2) states that in circumstances where private land ownership exists for radioactive waste disposal sites, the applicant "shall submit evidence that arrangements have been made for assumption of ownership in fee by the federal or a state agency before the Bureau issues a license". Since provisions do not exist within the Department of Health enabling legislation to provide for "the state to acquire by ownership in fee" the Envirocare site, the Bureau is through its own initiative providing an exemption to R447-25-9(2). Therefore, in accordance with Utah Radiation Control Rule R447-12-54(1), Envirocare is granted an exemption to Radiation Control Rule R447-25-9(2).

Sincerely,


Larry F. Anderson, Director
Bureau of Radiation Control

APPENDIX C

NUCLEAR REGULATORY COMMISSION
STATE OF UTAH
AGREEMENT PURSUANT TO
SECTION 274 OF THE
ATOMIC ENERGY ACT, AS AMENDED

Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of State Programs, has issued a decision concerning a Petition dated September 21, 1992, submitted by US Ecology, Inc. regarding the State of Utah Agreement State program. The Petition requested that the U.S. Nuclear Regulatory Commission (NRC) revoke or suspend the State of Utah's Agreement State program for failure to require Federal or State land ownership at the Envirocare of Utah, Inc. low-level radioactive waste (LLRW) disposal facility. Petitioner alleged that Under both Utah's Agreement State program and the Federal LLRW regulatory program, LLRW may not be disposed of on privately-owned land unless the State in which the site is located or the Federal government has formally expressed a willingness to accept title to the facility at site closure; the Envirocare site is located on privately-owned land; and neither Utah nor the U. S. Department of Energy has agreed to or expressed any willingness to accept title to the site.

By letter dated October 26, 1992, the NRC staff acknowledged receipt of the Petition and notified the Petitioner that this matter would be considered pursuant to 10 CFR 2.206. The NRC

staff published a notice of receipt of the Petition in the Federal Register on November 13, 1992 (57 FR 53941).

The Director of the Office of State Programs has denied the Petition. The reasons for this decision are explained in a Director's Decision Under 10 CFR 2.206 (DD-95-01), which is available for public inspection in the Commission's Public Document Room located at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

FOR THE NUCLEAR REGULATORY COMMISSION.

Richard L. Bangart
Richard L. Bangart, Director,
Office of State Programs.

Dated at Rockville, Maryland, this 26th day of January, 1995.

APPENDIX D

LEBOEUF, LAMB, GREENE & MACRAE L.L.P.

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

NEW YORK
WASHINGTON, D.C.
ALBANY
BOSTON
DENVER
HARRISBURG
HARTFORD
HOUSTON
JACKSONVILLE
LOS ANGELES
NEWARK
PITTSBURGH
PORTLAND, OR
SALT LAKE CITY
SAN FRANCISCO

1000 KEARNS BUILDING
136 SOUTH MAIN STREET
SALT LAKE CITY, UT 84101-1685

(801) 320-6700

FACSIMILE (801) 359-8256

WRITER'S DIRECT DIAL

(801) 320-6747

LONDON
IA LONDON BASED
MULTINATIONAL PARTNERSHIP

PARIS

BRUSSELS

MOSCOW

ALMATY

SÃO PAULO
ASSOCIATED OFFICE

RIYADH
AFFILIATED OFFICE

July 12, 2000

VIA FACSIMILE (202) 586-7757 and U.S. MAIL

Carolyn Huntoon
Assistant Secretary for Environmental Management
Department of Energy
Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Re: Long-Term Stewardship Issues Associated with Envirocare of Utah, Inc.'s
Proposed B & C Waste Application

Dear Ms. Huntoon:

This letter follows up on telephone conversations with personnel in your office concerning issues relating to long-term stewardship by the Department of Energy of the site underlying Envirocare of Utah, Inc.'s commercial low-level radioactive waste facility near Clive, Utah. Envirocare is currently licensed by the Utah Division of Radiation Control ("DRC") to receive naturally occurring radioactive materials and Class A low-level radioactive waste. In connection with its license, Envirocare received from the DRC, with the U.S. Nuclear Regulatory Commission's approval, a waiver of the requirement contained in 10 C.F.R. §61.7(c)(1) that the title to the land on which the facility is situated be held by the State of Utah or the Federal Government. The basis for the waiver is the commitment by Envirocare to establish and fund post-closure activities and controls that would give protection equivalent to government ownership of the site.

On November 1, 1999, Envirocare submitted a license modification request to the DRC to receive and dispose of containerized Class B and C low-level radioactive wastes in addition to

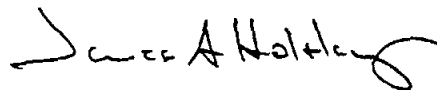
Ms. Carolyn Huntoon
July 12, 2000
Page 2

the wastes it is currently authorized to receive. The DRC has indicated that before it will consider extending the waiver to cover Class B and C wastes, Envirocare must first ascertain whether the State of Utah or the Federal government would be willing to accept title to the land underlying the disposal cell at the Clive facility, where Class B & C wastes are proposed for disposal. Our research has led us to conclude that the Department of Energy is the appropriate federal agency authorized by Congress to accept title to a low-level radioactive waste disposal site. *See* 42 U.S.C. §10171(b) (1995)

We will be meeting with state legislative and executive branch officials to explore possible state ownership; however, we need to obtain from the Department of Energy an indication of the Department's willingness to enter into such an arrangement and the conditions under which it would do so. We are working with the DRC to secure approval of the license modification within the next several months. As a result, we would appreciate a your response as soon as practicable.

Please do not hesitate to let me know if you have any questions or need any more information.

Very truly yours,

A handwritten signature in black ink, appearing to read "James A. Holtkamp", with a stylized flourish at the end.

James A. Holtkamp

cc. James D. Werner
William Sinclair
Fred G. Nelson, Esq.
Charles Judd

APPENDIX E



Department of Energy

Washington, DC 20585

October 31, 2000

James Holtkamp, Esquire
LeBoeuf, Lamb, Greene & MacRae
1000 Kearns Building
136 South Main Street
Salt Lake City, Utah 84101-1685

Dear Mr. Holtkamp:

Thank you for your July 12, 2000 letter, regarding long-term stewardship issues associated with Envirocare of Utah, Inc.'s proposed class B & C waste application and the Department of Energy's (DOE) authorities under section 151(b) of the Nuclear Waste Policy Act (NWPA) [42 U.S.C. § 10171(b)(1995)]. This letter responds to your inquiry, on behalf of your client Envirocare of Utah, Inc., whether "the State of Utah or the Federal Government would be willing to accept title to the land underlying the disposal cell at the Clive facility, where Class B & C wastes are proposed for disposal."

Your letter correctly notes that DOE is authorized by Congress to accept title to a low-level radioactive waste disposal site. However, as specified in the NWPA section 151(b), the Department could only exercise this authority under limited circumstances following the termination of Envirocare's license. These circumstances include a determination by the Nuclear Regulatory Commission (NRC) that:

(A) the requirements of the Commission for site closure, decommissioning, and decontamination have been met by the licensee involved and that such licensee is in compliance with the provisions of subsection (a) [Financial Arrangements]; (B) such transfer and custody will be transferred without cost to the Federal Government; and (C) Federal ownership and management is necessary or desirable in order to protect public health and safety, and the environment.

At a minimum, only after each of the above-mentioned circumstances has occurred could the site be appropriately considered for transfer. It should be noted, however, that even if these conditions are met, DOE's authority under section 151(b) to accept title is discretionary, not mandatory.

Currently, the Department does not have a mechanism for accepting title to low-level waste sites under section 151(b). Although the Department has limited experience with site transfer under section 151(c) of the NWPA (the Parkersburg, West Virginia site), it is not clear at this time what all of the issues associated

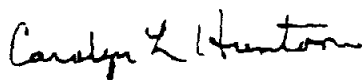


with, and conditions required for, the transfer of a low-level radioactive waste disposal facility would be under section 151(b). Without a mechanism in place to assess the conditions that would make site transfer appropriate, any consideration by the Department whether to exercise our authority under section 151(b) is premature at this time. However, it is clear any transfer mechanism developed by the Department would require that, at the time of transfer, all post-closure activities and controls required for the Envirocare site be clearly identified and sufficiently funded.

We understand that Envirocare is required to seek this determination from the Department as part of a license modification submitted to the Utah Division of Radiation Control for the disposal of Class B and C low-level radioactive waste. However, because the State of Utah is an agreement state with the NRC, it may also be appropriate to contact the NRC with respect to issues concerning Federal ownership of a privately-owned low-level waste disposal site.

Although the Department has no intent to exercise its authority under section 151(b) at this time, it is clearly in the interest of DOE and the Federal Government as a whole to understand the issues associated with the potential transfer of sites under section 151(b). Therefore, I have asked Jim Werner, Director, Office of Long-Term Stewardship, working with other appropriate offices, such as our Closure Office, to report to me by December 14, 2000, with a preliminary assessment of these issues. I encourage you to work with us in this effort. If you have any questions, please contact Jim Werner at (james.werner@em.doe.gov) or (202) 586-9280.

Sincerely,



Carolyn L. Huntoon
Assistant Secretary for
Environmental Management

APPENDIX F

Envirocare of Utah, Inc.
Summary of Surety Funding for Clive Facility

<u>LARW FACILITY</u>	<u>MIXED WASTE FACILITY</u>	<u>11e.(2) FACILITY</u>
Building and support facility demolition and decommissioning costs	Mixed Waste Buildings and support facility demolition and decommissioning costs	Building and support facility demolition and decommissioning costs included in LARW Surety
Disposal of the allowable waste in storage	Disposal of the allowable waste in storage	Disposal of allowable In cell bulk storage
Closure of disposal embankment assuming open cell volume at maximum allowable	Closure of disposal embankment assuming open cell volume at maximum allowable	Closure of disposal embankment assuming open cell volume at maximum allowable
Installation of permanent fencing, monuments, etc	Installation of permanent fencing, monuments, etc	Installation of permanent fencing, monuments, etc
Closure and Post Closure monitoring and maintenance costs for a period of 100 years	Closure and Post Closure monitoring and maintenance costs for a period of 100 years	Closure and Post Closure monitoring and maintenance costs for a period of 100 years
Current Surety Funded \$16,238,318 00	Current Surety Funded \$10,257,121 10	Current Surety Funded \$4,710,217 00
Proposed approximate increase for B & C embankment \$5,200,000		

Total of current and proposed surety funding with B & C application approval: \$36,405,656.00

APPENDIX G

AGREEMENT
ESTABLISHING COVENANTS AND RESTRICTIONS

THIS AGREEMENT is made the day and year hereinafter given by and between ENVIROCARE OF UTAH, INC., a Utah corporation (hereinafter "Envirocare"), having its general offices at 215 South State Street, Suite 1160, Salt Lake City, Utah 84111, and UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY (hereinafter the "Department").

RECITALS:

A. Envirocare owns legal title and holds possession of the following-described land (said land and buildings and appurtenances thereon hereinafter called "the property") in Tooele County, Utah:

Section 32, Township 1 South, Range 11 West, Tooele County, Utah, excepting the following-described property being the Vitro impoundment site:

PROPERTY DESCRIPTION OF VITRO EMBANKMENT

Beginning at a point located 1120.32 feet North 89°56' West, along the section line, and 329.49 feet South from the Northeast corner of Section 32, Township 1 South, Range 11 West, Salt Lake Base and Meridian and running thence North 89°56'32" West 1503.72 feet; thence South 0°03'28" West 2880.50 feet; thence South 89°56'32" East 1503.72 feet; thence North 0°03'28" East 2880.50 feet to the point of beginning.

B. The Department has issued to Envirocare its license (No. UT 2300249) to receive, possess and dispose of certain radioactive material at and upon the property and pursuant to the terms and conditions as specified in the license, as well as other approvals

BOOK 348

054898

PAGE 104-107

EN _____ PT _____ AB _____

18631-SE526.4

93 MAR 16 PM 4:26

DONNA S. McENEREY
TOOELE COUNTY RECORDER

DEPUTY [Signature] FEE 10.00

for a mixed waste facility permit (No. UTD 982598898) and ground water discharge permit (No. UGW 450005).

C. On April 6, 1989, Envirocare executed a certain Affidavit providing for restrictions on the use of the property in conformity with the license, permits and approvals issued by the Department, and caused said Affidavit to be recorded on April 6, 1989, at Entry No. 25720, in Book 285, at Page 438, of the official records of the County Recorder of Tooele County, Utah.

D. The parties desire to clarify and supplement the Affidavit of April 6, 1989, and the covenants therein made and use restrictions thereby granted and imposed upon the property.

NOW, THEREFORE, it is hereby agreed as follows:

1. Envirocare does declare and grant and the parties do agree that the property shall be used in conformity with and subject to the conditions, restrictions and limitations provided by 40 CFR 264.117(c) and that no use of the property shall be made in derogation or violation thereof.

2. No use shall be made of the property or permitted thereon which is in violation of the laws of the United States of America and the State of Utah and of any division, department or agency thereof, nor of the laws and ordinances of Tooele County, Utah.

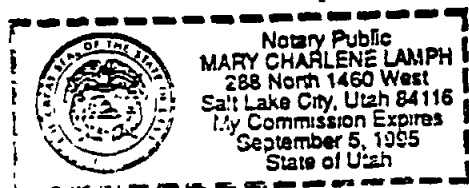
3. That portion of the property upon which radioactive waste material is stored or disposed shall be operated, maintained and site closure thereon performed as required by the laws of the State of Utah and of the Department.

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On the 11th day of March, 1993, personally appeared before me Dianne R. Nielson, who being by me duly sworn did say that she is the Executive Director of the Department of Environmental Quality and that she did sign the foregoing instrument on behalf of the Utah Department of Environmental Quality and that said Department executed the same.

My Address and Commission
Expiration Date Are:

Mary Charlene Lamph
NOTARY PUBLIC

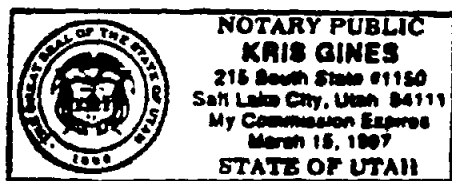


STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On this 15th day of March, 1993, personally appeared before me KHOSROW B. SEMNANI, who being by me duly sworn did say that he is the President of Envirocare of Utah, Inc. and that he did sign the foregoing instrument as President of said corporation and that said corporation executed the same.

My Address and Commission
Expiration Date Are:

Kris Gines
NOTARY PUBLIC



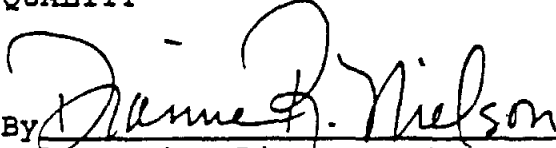
4. This Agreement and the covenants and restrictions herein contained constitutes a perpetual covenant running with the land as to the property and shall be recorded in the official records of the County Recorder of Tooele County, State of Utah.

5. This Agreement and the covenants and restrictions herein contained are in addition to and shall supplement and not be in substitution of that certain Affidavit dated April 6, 1989, as hereinabove described. The parties acknowledge and agree that said Affidavit and the provisions, covenants and restrictions therein contained remains in full force and effect, and said covenants and restrictions are perpetual and run with the land.

6. The rights, conditions, covenants and restrictions as contained in this Agreement shall inure to the benefit of and be binding on the heirs, personal representatives, successors and assigns of the respective parties hereto.

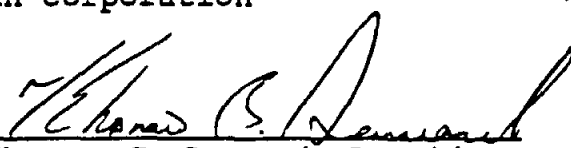
DATED this 16 day of March, 1993.

UTAH DEPARTMENT OF ENVIRONMENTAL
QUALITY

By 
Executive Director, Department
of Environmental Quality

[THE DEPARTMENT]

ENVIROCARE OF UTAH, INC., a
Utah corporation

By 
Khosrow B. Semnani, President

[ENVIROCARE]

APPENDIX H



State of Utah

DEPARTMENT OF ENVIRONMENTAL QUALITY OFFICE OF THE EXECUTIVE DIRECTOR

Michael O. Leavitt
Governor

Dianne R. Nielson, Ph.D.
Executive Director

168 North 1950 West
P.O. Box 144810
Salt Lake City, Utah 84114-4810
(801) 536-4400
(801) 536-4401 Fax
(801) 536-4414 T.D.D.

FEB 19 1993 8:37

SAS
VTH

KWS

Utah File

February 12, 1993

Carlton Kammerer, Director
State Programs
Office of Governmental and Public Affairs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Kammerer:

This is in partial response to your December 24, 1992 letter, concerning the State's rationale for its granting an exemption to Envirocare from the site ownership requirements of UAC R313-25-9(2), previously UAC R447-25-9(2). This Utah regulation is similar to NRC requirements in 10 CFR Part 61.59. The Utah regulations provide for the granting of exemptions, UAC R313-12-54, previously UAC R447-12-54, which is consistent with a similar exemption provision in NRC regulations, 10 CFR Part 61.6.

Your letter requests we address two general areas of concern, post-closure licensing procedures and the institutional controls of the disposal site after closure, in the context of specific questions listed in your attachments. The primary purpose for the trust agreement and licensing and institutional controls is to provide for the protection of public health, safety, and property. Your concerns are addressed in the following specific responses to your comments:

COMMENT 1

This comment refers to the expected dose to the public after closure as calculated by Rogers and Associates. The following partial response is provided.

The Utah Department of Environmental Quality conducted special modelling tests to determine the level of activity of specific radioactive isotopes that could safely be disposed of at the Envirocare facility without risk of exposures to the public through any pathway in excess of NRC standards. This modelling protocol and the resulting license provisions for isotope-specific limitations on other waste that can be received by Envirocare were for the purpose of providing for the protection of public health, safety, and property.

The limitations imposed on the nature and radioactivity of the materials which Envirocare is authorized to receive, and the engineering features designed to reduce post-closure exposures support the findings for

2-1-93

granting an exemption. The Envirocare facility is designed and constructed in accordance with the standards in Part 61 which are equivalent to UAC R313-25, previously R447-25. It is located away from human population at a site where ground water contamination is not a risk, although the ground water is being protected as if it were usable. It is licensed to receive only very low activity materials.

Finally, it is important to point out that it is not the State's intention to leave the site "open to unrestricted use following the 100 year active institutional control period." There is in place significant land use controls on the site as is more specifically discussed below. There is no question that government ownership would result in limits on the likelihood of uncontrolled occupation of the site. The State's position is that the government controls, as discussed below, will also limit future use of the site and limit the possibility of an inadvertent intruder.

Furthermore, it is important to note the specific circumstances involving the location of the Envirocare site. Envirocare is located within 300 feet of the Department of Energy Vitro Tailings Disposal site on the north, and also on the west side, within 300 feet of the proposed 11(e)2 disposal facility currently under active consideration by the NRC. Federal government ownership/control over those two sites will provide additional land use control.

COMMENT 2

The comment asks for a description of land use controls in the "absence of governmental control." There is no absence of governmental control, there is an absence of governmental ownership. This confusion between "control" and "ownership" may be the source of part of the expressed concerns.

It is possible to have ownership and exercise no control. On the other hand, state and local government can and do exercise control over the use of the land without any ownership rights through exercise of zoning and regulatory authorities. In the particular instance of the Envirocare facility, in addition to the license and regulatory requirements not referenced below, the following controls exist:

- a. Tooele County has zoned the area that Envirocare is in as heavy manufacturing-hazardous (MGH) designation. Enclosed is documentation on those zoning requirements (Enclosure 1).
- b. Because of the mixed waste licenses held by Envirocare, Envirocare has recorded in the public records of Tooele County an Affidavit which refers to and incorporates the land use restrictions of 40 CFR 264.117(c) which controls post closure activities at the site (Enclosure 2).
- c. Envirocare is required under License Condition 36 to provide "as built" drawings every six months. Because of Envirocare's construction techniques, each generator's waste is segregated from other waste, and site records to be provided after closure will be detailed.
- d. The transfer of site records is specifically directed by UAC R313-25-33, previously R447-25-33, particularly subparagraph (4).

- e. To be licensed, radioactive waste disposal facilities must meet siting criteria established in UAC R313-25-3, previously R447-25-3, (Enclosure 3).

COMMENT 3

This comment addresses the NRC's concern about licensing procedure and control. The following points are made:

- a. This comment can be responded to in part by reference to the government ownership issue. As discussed above, the focus must be on government control, not ownership per se. In NRC's Draft Environmental Impact Statement regarding 10 CFR Part 61, referred to in your letter on page 2, the primary concern is governmental control of the site. Government ownership is provided in the NRC rules as a means of maximizing control. See DEIS 4.3.6.1, pp. 4-47 through 4-49. But government ownership is not the exclusive means to protect public health and safety through long term control of the site. The Utah Division of Radiation Control recognized this fact in its Land Ownership Exemption rationale of May 8, 1992 in stating that "... private ownership itself does not directly relate to or present undue hazard to public health and safety". While government ownership is related to public health and safety, it is simply not the exclusive means of protecting public health and safety.
- b. License Condition 60 of Envirocare's license and UAC R313-25-14, previously R447-25-14, establish requirements that Envirocare must meet to apply for a license amendment that will authorize closure of the facility. License Condition 60 requires one (1) year advance notice of anticipated closure and the regulation states that the application for a license amendment to close the facility shall include "a final revision and specific details of the disposal site closure plan ...". After review and acceptance of the closure plan, the Division of Radiation Control will amend the license authorizing closure. After closure, UAC R313-25-15, previously R447-25-15, prescribes a five (5) year post-closure and maintenance period until the license is transferred to the site owner for institutional control. UAC R313-25-16, previously R447-25-16, "Transfer of License" and UAC R313-25-17, previously R447-25-17, "Termination of License," presumes that the site operator will transfer and or terminate their license authorization and turn over the site to a government agency for the control period. Since Envirocare is the site owner and operator, and no government agency is/has been authorized to take title to the site, transfer and termination of the Envirocare license would not occur. Therefore, Envirocare's owners would remain responsible for the site and the institutional control phase would be implemented in that manner.

The issue is, again, control, not ownership or licensing. The alternative means of control created by Utah through the financial surety and trust agreement give exclusive control of the trust fund to the State. R313-25-31(8), previously R447-25-31(8), states that "financial or surety arrangements shall remain in effect until the closure and stabilization program has been completed...and the license has been transferred". Until a transfer of the license occurs, the surety arrangement remains in effect and will continue to be

reviewed to determine the amount necessary to protect public health, safety, and property. With that fund and other regulatory authorities, the State will be equipped to take whatever action is necessary to protect the public health, safety, and property.

- c. There is one other factor which significantly impacts any consideration of the issue of government ownership of this site. Envirocare is also licensed to receive low level mixed waste, meaning material that qualifies as low level radioactive waste under state and federal law, and which is contaminated with materials considered hazardous under state and federal law. As a result of this licensing and permitting, certain portions of Envirocare's facility are subject to dual regulation, by the NRC and State under federal and state radiation control law, and by the U.S. Environmental Protection Agency and State under the Resource Conservation and Recovery Act (RCRA) and state law. To a significant extent, the regulatory concern of EPA and the Utah Department of Environmental Quality under RCRA is identical to that of the NRC and the State under the Atomic Energy Act, the Nuclear Waste Policy Act, and related statutes and regulations; the isolation of toxic wastes from the human environment for sufficiently long periods of time to prevent threats to public health, safety, and property.

RCRA, however, does not impose in any circumstance requirements for governmental ownership of hazardous waste disposal sites. RCRA and state hazardous waste laws rely on siting, design and construction criteria and enforcement mechanisms to protect the public health, safety, and property which is really identical to the NRC approach. See UAC R315-3-36 and R315-8-2 and 6. Envirocare's design and construction meets not only the standards of the NRC and Utah Division of Radiation Control, but also the standards of EPA and the Utah Division of Solid and Hazardous Waste. Further, any violations by Envirocare will be subject to enforcement actions under both regulatory systems. These controls are adequate alternatives to government ownership.

COMMENT 4

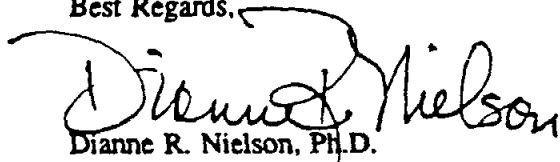
The relevance of the State's listed enforcement mechanisms (including the issuance of orders, civil penalties, criminal proceedings, and the State's ability to impound radioactive material) is that these mechanisms are part of the regulatory system that is designed to ensure protection of the public health, safety, and property. They do not stand alone. They supplement the rights of the State under the license and the State's radiation control regulations. They also supplement the trust fund which now exceeds \$1.4 million and is regularly evaluated for adjustment and is under the control of the State.

The State has not committed to "step in and take over" the site. The Utah legislature has not authorized the assumption of responsibility for the site nor has it authorized the State to take title to the site. The enforcement mechanisms, license, and trust agreement are not a direct equivalent to government ownership. The issue is not ownership per se, but control. Taking into account the nature and activity level of waste being disposed of at Envirocare and the closure requirements and standards, the listed enforcement mechanisms, license, and trust agreement provide the State control over the site and support the State's decision to exempt this particular facility from the requirement of government ownership.

If Envirocare attempts to abandon the site, the State will have its enforcement measures and licensure provisions to require compliance by Envirocare. Additionally, the State's most effective tool will be the trust fund, which is designed to provide the resources to safely complete any disposal and closure activities in the event of abandonment. Finally, the State could, should all these safeguards prove not to be adequate, in its discretion, take such additional actions as may be further authorized by law to protect public health, safety, and property.

If you have any questions regarding these responses, please contact Dane Finerfrock, Division of Radiation Control.

Best Regards,



Dianne R. Nielson, Ph.D.
Executive Director

Enclosure

ENCLOSURE 2

AFFIDAVIT

AFFIDAVIT

STATE OF UTAH)

: ss.

COUNTY OF SALT LAKE)

The undersigned affiant having been duly sworn deposes and says as follows:

1. The affiant is Envirocare of Utah, Inc.

2. Affiant owns the following described land in Tooele County, Utah, namely:

Section 32, Township 1 South, Range 11 West, Tooele County, Utah, except for the legal description of their impoundment of the Vitro site:

PROPERTY DESCRIPTION FOR VITRO EMBAZEMENT

Beginning at a point located 1120.32 feet N 89 degrees 56' W., along the section line, and 329.49 feet South from the Northeast corner of Section 32, Township 1 South, Range 11 West, Salt Lake Base and Meridian and running thence: N 89 degrees 56' 32" W 1503.72 feet, thence S 0 degrees 03' 28" W 2880.50 feet, thence S 89 degrees 56' 32" E 1503.72 feet, N 0 degrees 03' 28" E 2880.50 feet to the point of the beginning.

3. Such land has been or may be used to manage radioactive and hazardous waste.

4. The use of such land is restricted under 40 CFR 264 117(c).

5. The survey plat and record of the type, location, and quantity of hazardous waste disposed of within each cellar have been filed with the local zoning authority or the authority with jurisdiction over local land use.

IN WITNESS WHEREOF, This Affidavit is executed this 6 day of April 1989.

[Signature]
Khosrow Semnani, President
Envirocare of Utah, Inc.

Subscribed, and sworn to before me this 6 day of

April 1989

My Commission Expires:

5/24/91

[Signature]
Notary Public
Residing in Salt Lake County



(19) "Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

(20) "Stability" means structural stability.

(21) "Surveillance" means monitoring and observation of the disposal site for purposes of visual detection of need for maintenance, custodial care, evidence of intrusion, and compliance with other license and regulatory requirements.

(22) "Waste" means those low-level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-Level Radioactive Waste Policy Act, P.L. 96-573, that is, radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in section 11 e.(2) of the Atomic Energy Act (uranium or thorium tailings and waste).

(23) "Treatment" means the stabilization of waste or the reduction in volume of waste by a chemical or a thermal process.

(24) "Land Disposal Facility" means a facility where wastes are kept, maintained, stored, or held for a period exceeding one year.

R447-25-3 Siting Criteria and Pre-licensing Plan Approval for Commercial Radioactive Waste Disposal Facilities.

(1) Each person proposing to construct or operate a commercial radioactive waste disposal facility, including waste incinerators, must obtain a plan approval from the Bureau of Radiation Control prior to applying for a license. No plan may be approved that does not meet the siting criteria and plan approval requirements contained in R447-25-3.

(2) The siting criteria and plan approval requirements in this section apply to prelicensing plan approval applications that have been submitted and that have not yet been approved, as well as all future applications.

(3) Treatment and disposal facilities, including commercial radioactive waste incinerators, may not be located:

(a) within or underlain by:

(i) national, state, and county parks, monuments, and recreation areas; designated wilderness and wilderness study areas; wild and scenic river areas;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitat for listed or proposed endangered species as designated pursuant to federal law;

(iii) 100 year floodplains;

- (iv) 200 ft. of Holocene faults;
- (v) underground mines, salt domes and salt beds;
- (vi) dam failure flood areas;
- (vii) areas likely to be impacted by landslide, mud flow, or other earth movement, unless adverse impacts can be reasonably mitigated;
- (viii) farmlands classified or evaluated as "prime", "unique", or of "statewide importance" by the U.S. Department of Agricultural Soil Conservation Service under the Prime Farmland Protection Act;
- (ix) five miles of existing permanent dwellings, residential areas, and other habitable structures including, schools, churches, and historic structures;
- (x) five miles of surface waters including intermittent streams, perennial streams, rivers, lakes, reservoirs, estuaries, and wetlands.
- (xi) 100 ft. of uranium mill tailings piles;
- (xii) 1000 ft. of archeological sites to which adverse impacts cannot reasonably be mitigated;
- (xiii) recharge zones of aquifers containing ground water which has a total dissolved solids content of less than 10,000 mg/l;
- (xiv) drinking water source protection areas designated by the State Drinking Water Committee;

(b) in areas:

- (i) above or underlain by aquifers containing ground water which has a total dissolved solids content of less than 500 mg/l and which do not exceed state ground water standards for any containment;
- (ii) above or underlain by recharge zones of aquifers containing ground water which has a total dissolved solids content of less than 3000 mg/l;
- (iii) above or underlain by aquifers containing ground water having a total dissolved solids content of less than 3000 mg/l and within State ground water quality standards;
- (iv) above or underlain by aquifers containing ground water which has a total dissolved solids content between 3000 and 10,000 mg/l where the distance from the surface to the ground water is greater than 100 ft.;
- (v) areas subject to the lowering or collapse of the land surface, either locally or regionally, such as areas of extensive withdrawal of water, gas, or oil.

(vi) areas above or underlain by weak and unstable soils, such as soils that lose their ability to support foundations as a result of hydrocompaction, expansion, or shrinkage.

(vii) areas above or underlain by karst terrains.

(4) Incinerators with an associated ground disposal facility may not be located above aquifers containing ground water which has a total dissolved solids content below 500 mg/l. Incinerators without an associated ground disposal facility may not be located above aquifers containing ground water which has a total dissolved solids content below 3000 mg/l.

(5) No facility may be located within a distance to existing drinking water wells and watersheds for public water supplies of one year ground water travel time plus 1000 feet for incinerators and of five years ground water travel time plus 1000 feet for land disposal facilities.

(6) The plan approval application must include hydraulic conductivity and other information necessary to adequately determine the one or five year ground water travel distance, as applicable.

(7) The plan approval application must include adequate studies to determine whether ground water aquifers exist in the area of the proposed site and the quality of the ground water of all aquifers identified in the area of the proposed site.

(8) The Bureau may require the applicant to conduct vadose zone or other near surface monitoring if the Bureau determines it is reasonably necessary to support or confirm information provided in the plan approval application.

(9) Emergency response and safety.

(a) The plan approval application shall address the availability and adequacy of emergency services, including medical and fire response. The application shall provide evidence that the applicant has coordinated emergency response plans with local and regional emergency response resources. A plan approval application must demonstrate reasonable availability of emergency services, including medical and fire response services.

(b) The plan approval application shall include emergency response plans for responding to emergencies both at the site and involving wastes being transported to and from the site within the state. Details of the proposed emergency response plan shall be given in the plan approval application and will be stipulated in the plan approval and radioactive materials license.

(c) The plan approval application shall proposed transportation routes within the state for the radioactive wastes to be transported. No proposed plan may be approved which proposes that radioactive waste be transported on roads or bridges where weight restrictions would be exceeded. No proposed plan may be approved which unreasonably poses adverse impact or risk of harm to inhabited areas. The plan approval application shall address risks to uninhabited areas, including both residential and non-residential areas; the width, condition, the types of roads to be used; roadside development on proposed routes; seasonal and climatic factors which may affect safety, alternate emergency access to the facility, the type, size, and configuration of vehicles proposed to haul wastes; transportation restrictions on proposed routes; and the transportation means and routes available to evacuate the population at risk in the event of accidents, including spills and fires.

(10) Siting Authority. The Bureau recognizes that Titles 10 and 17 of the Utah Code gives cities and counties authority for local use planning and zoning. Nothing in R447-25-3 precludes cities and counties from establishing additional requirements as provided by applicable state and federal law.

R447-25-4 License Required.

(1) No person may receive, possess, and dispose of waste received from other persons at a land disposal facility unless authorized by a license issued by the Bureau pursuant to this chapter, and R447-22 of these rules.

(2) Each person shall file an application with the Bureau pursuant to R447-22-32 of these rules and obtain a license as provided in this chapter before commencement of construction of a land disposal facility. Failure to comply with this requirement may be grounds for denial of a license.

R447-25-5 Content of Application.

In addition to the requirements set forth in R447-22-33 of these rules, an application to receive from others, possess, and dispose of wastes shall consist of general information, specific technical information, institutional information, and financial information as set forth in R447-25-6 through R447-25-10.

R447-25-6 General Information.

The general information shall include each of the following:

(1) identity of the applicant including:

(a) the full name, address, telephone number, and description of the business or occupation of the applicant;

(b) if the applicant is a partnership, the name and address of each partner and the principal location where the partnership does business;

(c) if the applicant is a corporation or an unincorporated association;

(i) the state where it is incorporated or organized and the principal location where it does business; and

(ii) the names and addresses of its directors and principal officers; and

(d) if the applicant is acting as an agent or representative of another person in filing the application, all information required under R447-25-6(1) must be supplied with respect to the other person.

(2) Qualifications of the applicant shall include each of the following:

ENCLOSURE 3

R313-25 SITING CRITERIA

BOOK 285

RECORDED AT REQUEST OF

025720

Success
Enclosure
ECS APR -6 PM 2 48

PAGE 432-439

BONNA L. McRENDICK
TOBELE COUNTY RECORDER

EN ✓ PT 1-1-A

DEPUTY AM FEE \$ 00

[The following section contains extremely faint and illegible text, likely bleed-through from the reverse side of the page. It appears to be a series of lines of text, possibly a list or a set of instructions, but the characters are too light to transcribe accurately.]

APPENDIX I

BOOK 353

057078

PAGE 452-458

EN AGREEMENT AB

RECORDED AT REC'D ST. 1

93 JUN 30 AM 10:32

DONNA S. McNEIL
TOOELE COUNTY RECORDER

ESTABLISHING OF RESTRICTIVE COVENANTS

DEPUTY DM FEE 18.00

THIS AGREEMENT is made the day and year hereinafter given by and between ENVIROCARE OF UTAH, INC. (hereinafter "Envirocare"), a Utah corporation having its general offices at 46 West Broadway, Suite 240, Salt Lake City, Utah 84101, and UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY (hereinafter the "Department").

RECITALS:

(1) Envirocare is the record owner of the following-described premises located in Tooele County, Utah, to wit:

SEE ATTACHED EXHIBIT A FOR A LEGAL DESCRIPTION AND EXHIBIT B FOR A DIAGRAM OF THE PROPERTY.

(2) Envirocare is in the process of constructing and operating a low-level radioactive waste disposal facility described in Exhibit B for the permanent disposal of radioactive material pursuant to a license granted by the Department under R447-25.

(3) The parties desire to clarify and supplement the Agreement Establishing Covenants and Restrictions recorded March 16, 1993, at Book 348, Pages 104-107.

NOW, THEREFORE, these restrictive covenants are executed by Envirocare to ensure the long-term integrity of the disposal facility for the safety of the people of the State of Utah, to wit:

(1) These covenants shall be in addition to any restrictive covenants currently on record affecting the above-described premises, and recorded at Tooele, Utah, in the Tooele County Records.

(2) No excavation or construction, except as necessary to maintain the integrity of the above-described premises, shall be allowed after the low-level radioactive waste is disposed of and the facility closed.

(3) No uses of the property shall be made which may impair its integrity. Any change in use following closure of the facility shall require the prior written consent of the Department, or its successors or assigns, which shall not be unreasonably withheld.

(4) Envirocare, its successors or assigns, shall erect monuments and markers and shall thereafter continuously maintain, while it has title, these monuments and markers. These monuments and markers are to be approved by the Department to warn of the presence of radioactive material at the site.

(5) Envirocare shall notify the Department of its intent to convey any interest in the property described herein. Such conveyance shall not be made

without the prior written approval of the Department, provided however that such approval is not to be unreasonably withheld. No conveyance of title, easement or other interest in the property shall be consummated by Envirocare without adequate and complete provision for continued maintenance of the property.

(6) Any state or Federal governmental agency, affected by any violations of these restrictive covenants, may enforce them by legal action in the District Court for Tooele County.

(7) Any of the parties mentioned in the previous paragraph may obtain an immediate temporary restraining order from the District Court upon allegation that these restrictive covenants have been violated without any further showing being required. Envirocare, its successors or assigns, shall then bear the burden of proof as to why such temporary restraining order should not be made a permanent injunction by the court.

(8) Envirocare, its successors and assigns, shall not at any time institute legal proceedings, by way of quiet title or otherwise, to remove or amend these restrictive covenants unless the Department has given advance written approval.

These restrictive covenants shall run with the land in perpetuity and shall be binding upon Envirocare, its successors and assigns.

Dated this 29th day of June, 1993.

UTAH DEPARTMENT OF ENVIRONMENTAL
QUALITY

ENVIROCARE OF UTAH, INC., a
Utah corporation

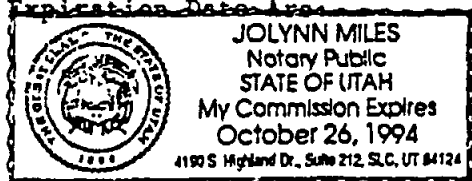
By Dianne R. Nielson
Executive Director, Department
of Environmental Quality

By Khosrow B. Semnani
Khosrow B. Semnani, President

STATE OF UTAH)
) ss.
COUNTY OF TOOELE)

The foregoing instrument was acknowledged before me this 29th day of June, 1993, by KHOSROW B. SEMNANI, the President of Envirocare of Utah, Inc., on behalf of the Corporation.

My Address and Commission
Expiration Date: _____



Jolynn Miles
NOTARY PUBLIC

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On the 29 day of June, 1993, personally appeared before me Dianne R. Nielson, who being by me duly sworn did say that she is the Executive Director of the Department of Environmental Quality and that she did sign the foregoing instrument on behalf of the Utah Department of Environmental Quality and that said Department executed the same.

My Address and Commission
Expiration Date. Are: -----

MARY CHARLENE LAMPH
Notary Public
233 North 1400 West
Salt Lake City, Utah 84116
My Commission Expires
September 5, 1995
State of Utah



Mary Charlene Lamph
NOTARY PUBLIC

EXHIBIT A

TO

AGREEMENT ESTABLISHING OF RESTRICTIVE COVENANTS

Premises located in Tooele County, Utah, described as follows:

Section 32, Township 1 South, Range 11 West, Tooele County, Utah, excepting the following-described property being the Vitro impoundment site:

PROPERTY DESCRIPTION OF VITRO EMBANKMENT

Beginning at a point located 1120.32 feet North 89°56' West, along the section line, and 329.49 feet South from the Northeast corner of Section 32, Township 1 South, Range 11 West, Salt Lake Base and Meridian and running thence North 89°56'32" West 1503.72 feet; thence South 0°03'28" West 2880.50 feet; thence South 89°56'32" East 1503.72 feet; thence North 0°03'28" East 2880.50 feet to the point of beginning.



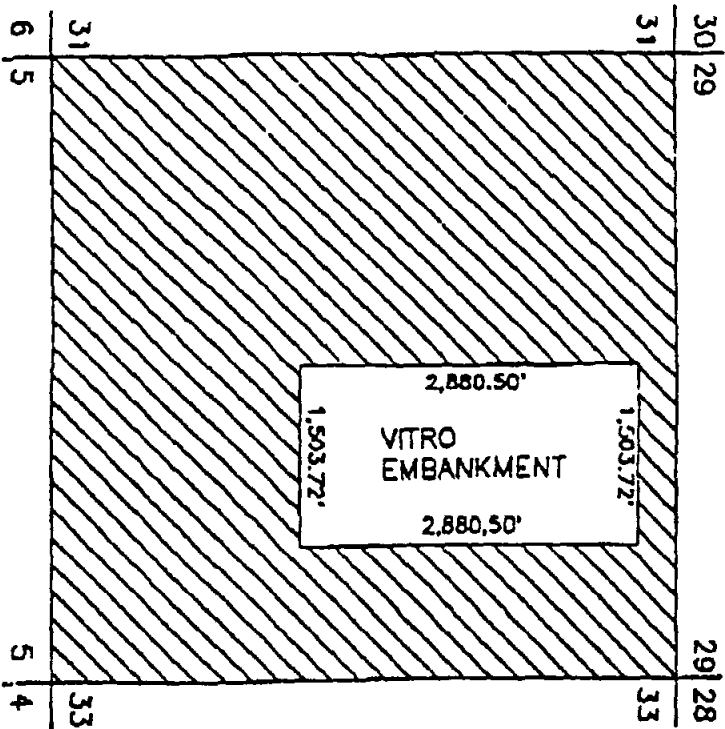
ENVIROCARE OF UTAH, INC.

"THE SAFE ALTERNATIVE FOR WASTE DISPOSAL"

ENVIROCARE OF UTAH PROPERTY

PROPERTY LOCATION

SCALE: 1"=1600' DATE: 29 JUN 93 FIV



ENVIROCARE OF UTAH PROPERTY
(ALL OF SECTION 32 EXCEPT
VITRO EMBANKMENT)

EXHIBIT "B"

APPENDIX J



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON D C 20555-0001

Dianne R. Nielson, Ph.D.
Executive Director
Department of Environmental Quality
168 North 1950 West
P.O. Box 144810
Salt Lake City, Ut 84114-4810

Dear Dr. Nielson:

Thank you for your letters of February 12 and March 17, 1993, responding to our comments and recommendations following our review of the State's radiation control program which were sent to the State of Utah in our letters of September 2 and December 24, 1992.

We appreciate the positive actions you and your staff are implementing in response to our comments. Our understanding is that the State is developing a decommissioning rule that when adopted would bring your regulations up-to-date. Your responses to the other comments appear acceptable, except for the land ownership exemption which is discussed below, and we will verify them during the next review of your program.

The State's response on the rationale for the exemption from the land ownership requirement presented the concept of exercising control of the site equivalent to that provided by governmental ownership. The Nuclear Regulatory Commission (NRC) considers this to be an acceptable approach to providing the rationale for the exemption. The State presented several clarifying points on how the State would exercise control of the site without the need for the State or Federal government to have title to the site. The NRC considers this approach acceptable with the proper implementing mechanism(s) put in place. With the implementation of a restrictive covenant that will run with the land (an example is presented as Attachment 1), the NRC staff considers the State's controls to be adequate. Please submit a copy of a final restrictive covenant when it is implemented so that our documentation will be complete.

We consider the State of Utah's rationale of exercising effective control of the waste disposal site without State or Federal land ownership to be acceptable and to provide equivalent control to that which would be provided by implementing State or Federal land ownership.

In discussions with your staff on February 17, 1993 and in subsequent discussions, your staff agreed to update, as part of the annual review, the Trust Agreement and supporting calculations to remove the inconsistencies identified in the attachment to the December 24, 1992 letter from me to Mr. Kenneth Alkema. Attachment 2 contains a discussion of the major issues and the comments identified by the NRC staff. We will review this update during our next program review.

ENCLOSURE 4

Dr. Nielson

2

I appreciate your support of the State's radiation control program and look forward to working with you in the future. Should you have any questions, please feel free to contact me or Robert Doda, Region IV, State Agreements Officer.

Sincerely,

Carlton Kammerer, Director
Office of State Programs

Attachments:
As stated

cc: L. Anderson
D. Finerfrock